No. 77-418

In the Supreme Court of the United States

OCTOBER TERM, 1977

RONALD J. CALHOUN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, a United States naval officer, seeks review of the judgment of the court of appeals affirming the dismissal of his action to recover withheld pay. The court of appeals held that the United States discharged its debt to petitioner when it honored a facially valid writ of garnishment.

Petitioner filed this action under the Tucker Act, 28 U.S.C. 1346(a), in the United States District Court for the Eastern District of Virginia to recover pay that had been withheld, pursuant to 42 U.S.C. (Supp. V) 659,[1] in

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[1]42 U.S.C. (Supp. V) 659 waives sovereign immunity to permit the garnishment of wages of government employees, including members of the military, "in like manner and to the same extent as if the

satisfaction of a writ of garnishment for child support and alimony payments. The writ was issued for amounts owing under a California divorce and support decree obtained by petitioner's former wife on July 18, 1975. Following petitioner's failure to comply with the support decree, his former wife obtained a writ of execution, which she served on the United States Navy, together with a notice of garnishment in accordance with 42 U.S.C. (Supp. V) 659. She concurrently served petitioner, who was additionally apprised by the United States that the garnishment had been levied (Pet. App. 1a-2a, 3a-5a).

Petitioner did not initiate any state court proceeding to challenge the garnishment, but he notified the United States that, in his view, the support decree was invalid for lack of *in personam* jurisdiction and that he intended to sue the United States if it honored the California process.[2] Since the California garnishment process was valid on its face, the United States honored the garnishment and withheld the appropriate amount from petitioner's pay.

United States were a private person," where process is brought for the enforcement of the employees' "legal obligations to provide child support or make alimony payments." The section was clarified by Pub. L. 95-30, 91 Stat. 157 (effective June 1, 1977), which added the following provision:

> Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

[2]Petitioner's basis for contesting the validity of the California support decree was that he had been served by registered mail rather than personally. The California Civil Code, however, permits the courts to exercise personal jurisdiction by registered mail service over nonresidents who have had the requisite minimum contacts with the state. Cal. Code of Civil Procedure §§ 410.10, 415.20 (West, 1973).

Petitioner thereupon filed this suit for back pay. The district court entered summary judgment for the United States (Pet. App. 3a-5a), and the court of appeals affirmed (Pet. App. 1a-3a).

Petitioner claims that by refusing to decide "the validity of the California writ" (Pet. 7), the district court frustrated his ability to obtain judicial consideration of his claim that his pay had been wrongfully withheld. But the proper forum for petitioner's challenge to the jurisdiction of the California court was the state court, and it "was [petitioner's] obligation to attack the judgment [in state court] if he wished to avoid the deduction from his pay" (Pet. App. 3a).[3] Petitioner had an opportunity to appear specially in the divorce proceedings to contest jurisdiction, to challenge the support decree on appeal, or to contest the California court's subsequent issuance of the writ of attachment and notice of garnishment. Petitioner declined these opportunities and the state garnishment writ, which was valid on its face became binding upon the United States, which had made itself "subject * * * to legal process brought for the enforcement * * * of * * * legal obligations to provide child support or make alimony payments." 42 U.S.C. (Supp. V) 659.

The United States has no obligation to challenge the validity of the support decree or to contest the writ of attachment on petitioner's behalf. The only "duty of the garnishee [is] to give notice to his own creditor, if he would protect himself, so that the creditor may have the opportunity to defend himself against the claim of the

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[3]The court of appeals correctly observed that petitioner "is assuredly in a better position * * * than * * * the United States [to] effectively litigate" the question whether the California court properly asserted *in personam* jurisdiction over him (Pet. App. 3a).

person suing out the attachment." *Harris* v. *Balk*, 198 U.S. 215, 227;[4] see also *Baltimore and Ohio Railroad Co.* v. *Hostetter*, 240 U.S. 620; *Agnew* v. *Cronin*, 148 Cal. App. 2d 117, 306 P. 2d 527. Having duly notified petitioner and provided that opportunity, "[t]he United States was under no duty to contest the judgment" (Pet. App. 3a). By satisfying the garnishment writ the United States extinguished its obligation to petitioner. See *Huron Corporation* v. *Lincoln Co.*, 312 U.S. 183, 189; *Harris* v. *Balk*, *supra*, 198 U.S. at 227. That also is the clear purport of Congress' latest enactment in this field, which absolves the United States from liability for payments "pursuant to legal process regular on its face" (see note 1, *supra*). The court of appeals therefore correctly sustained the dismissal of petitioner's action without reaching petitioner's collateral challenge to the jurisdiction of the state court (see Pet. App. 5a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

NOVEMBER 1977.

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[4]In *Shaffer* v. *Heitner*, No. 75-1812, decided June 24, 1977, this Court recently overruled that aspect of *Harris* v. *Balk* holding that a party can be subject to the *in rem* jurisdiction of any forum in which a debtor of that party can be found and personally served and held that the exercise of *quasi in rem* jurisdiction must be based on the minimum contacts standards enunciated in *International Shoe Co.* v. *Washington*, 326 U.S. 310. However, the Court left undisturbed that aspect of *Harris* v. *Balk* pertaining to the obligations of the garnishee to his creditor, as well as the rule that a garnishee who, in good faith, satisfies a judgment on his creditor's behalf extinguishes his liability to the extent of the judgment.